

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of)
Telecommunications and Energy regarding) DTE 04-1
the assignment of interstate pipeline capacity)
pursuant to Natural Gas Unbundling)

**Response of Select Energy in support of Motions for Protective Treatment of
Confidential Information contained in responses to Information Request 1-7**

Select Energy, Inc. (Select) hereby files in support of various motions filed in this proceeding for protection from public disclosure of certain confidential and competitively sensitive information submitted under seal by several of the local gas distribution companies (LDCs)¹ in response to Information Request LDC-1-7. Information Request LDC-1-7 directs the LDCs to provide the names of retail marketers in their service territories, peak and off-peak volumes transported and percentage of total LDC sendout for the most recent heating season.

Select, as a marketer of natural gas in the Commonwealth, considers information concerning its volumes and market share to be proprietary and confidential and could be competitively harmed if it were to be publicly disclosed. Select does *not object to providing this information to the Department*. Nor would Select object if the volumes and market share information were disclosed *without attribution* to particular marketers.

Significantly, Select is unaware that anyone other than the Department staff has asked for this information. Therefore, disclosure to the Department, subject to the protections requested by the various LDCs would not harm the public.

¹ Select understands that motions have been filed by Unitil (on behalf of Fitchburg Gas & Electric), NSTAR, KeySpan, New England Gas, and Berkshire Gas. Select has not received copies of all of these motions.

I. Legal Standard

Protection of confidential information is guided by G. L. c. 25, § 5D, which states in part:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

Recognizing the competitively sensitive nature of pricing terms in gas and electric supply contracts, the Department has protected such terms from public disclosure. See, Colonial Gas Company, D.P.U. 96-18, at 4 (1996), Standard of Review for Electric Contracts, D.P.U. 96-39, at 2 (1996). See also, Berkshire Gas, et al., D.P.U. 93-187, et. al. (1994). Information as to volumes and market share are similarly competitively sensitive and should be according similar protection from public disclosure.

II. Support for Confidential Treatment

As a result of legislative and regulatory support for competitive markets, the retail gas market in Massachusetts is very competitive. Consequently, information regarding volumes and market share are competitively sensitive and are treated as proprietary confidential information. Disclosure of this information could harm a marketer's

competitive position.² Moreover, consumers could be harmed by disclosure of volumes and market share data.

Specifically, if competitors were made aware of a marketer's relative market share, they could target markets where that marketer is perceived to be weak and drive it from that market. This would not only harm that marketer, but also consumers, inasmuch as it would limit market choices. On the other hand, competitors might avoid areas where a particular marketer has a larger market share, opting instead to focus on relatively lesser served markets. Again, the result would limit consumer choices.

In addition to competing for customers, marketers compete for commodity supply and transportation capacity. If a marketer's suppliers or competitors became aware of its volumes and market share, the marketer would be at a competitive disadvantage in its negotiations for gas supply and transportation. For example, to the extent suppliers or competitors can determine a marketer's supply position, they could drive available commodity supplies and transportation capacity prices up in short markets, thus increasing the marketer's cost of supply. Conversely, they could drive the price of commodity or transportation down in long markets, thus decreasing the value of the marketer's inventory. Both of these scenarios would harm the marketer's competitive position and would likely to lead to higher prices, which would be detrimental to the marketer and its customers. Accordingly, such situations could affect a marketer's decision to assign available resources to particular markets or potentially to abandon certain markets altogether.

² Select understands that some of this information has been made public. Select submits that this would

Marketers have expended significant funds and efforts to develop their markets. Accordingly, information on volumes and market share is valuable and commercially sensitive to each marketer. Giving that information away through public disclosure could chill the market, hurting marketers and their customers.

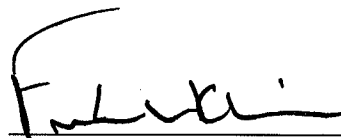
III. Conclusion

It bears repeating that Select does not object to disclosure of this information to the Department. However, where no one else has requested this information, and in light of the potential harm that could result from disclosure of this information beyond the Department, Select respectfully requests that the Department grant the Motions for Protective Treatment.

Respectfully submitted,

Select Energy, Inc.

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not justify disclosing more market data. In other words, simply because competitors may have seen part of the puzzle, does not justify disclosure of the rest of the pieces. If the LDCs' motions are not granted, the whole of Select's market data will be disclosed and the competitive harm will follow.